UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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JOSHUA WARD, and FONDA WARD,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF TRANSPORTATION/CALTRANS; CALIFORNIA AMTRAK; STATE OF CALIFORNIA; JACOB KEATING; COUNTY OF SACRAMENTO; COUNTY OF YOLO; CITY OF WEST SACRAMENTO; UNION PACIFIC RAILROAD, a business organization of unknown status; and DOES 1-50, inclusive,

Defendants.

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NO. CIV. S-04-0678 FCD PAN

MEMORANDUM AND ORDER

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This matter is before the court on motion by defendants National Railroad Passenger Corporation[1] ("AMTRAK") and Union Pacific Railroad Corporation ("Union Pacific")(collectively

[1] This defendant was erroneously sued as "California Amtrak."

referred to as "defendants"), for summary judgment pursuant to Fed. R. Civ. P. 56(c).[2] Plaintiffs, Joshua and Fonda Ward ("plaintiffs"), oppose the motion. For the reasons stated herein, defendants' motion is GRANTED in part and DENIED in part.[3]

BACKGROUND

Following are the facts construed in the light most favorable to the plaintiffs. Plaintiffs Joshua and Fonda Ward, who were in the process of relocating from Georgia to Oregon, arrived in Sacramento on or about March 6, 2003. (Dep. of Joshua Ward ("Ward Dep.") at 12:13-25, Ex. D to Dec. of An H. Nguyen in Supp. Summ. J.) The couple made a camp on the outskirts of Riverwalk Park in West Sacramento. (Ward Dep. at 13:11-24.) The city of West Sacramento is separated from the city of Sacramento, immediately to the east, by the Sacramento River.

The I-Street Bridge, which is owned and maintained by Union Pacific, is a two-level bridge located just west of the Union Pacific passenger station platform. (Resp. UF ¶¶ 12, 13; Dec. of Brian P. Heikkila ("Heikkila Dec.") ¶ 13.) The upper level of the bridge contains a street for motor vehicle traffic and a sidewalk for pedestrian traffic. (Ward Dep. at 19:11-17; Heikilla Dec.¶ 13.) The lower level of the bridge contains two sets of mainline train tracks. (Resp. UF ¶ 13.) Between the two sets of

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[2] The motion was originally schedule for hearing on May 27, 2005. Prior to the hearing on the motion, the parties filed a stipulation to continue the hearing on the motion until July 22, 2005.

[3] Because oral argument will not be of material assistance, the court orders the matter submitted on the briefs. E.D. Cal. Local Rule 78-230.

tracks runs what plaintiffs describe as a "catwalk", which is "wire grate that you can walk on." ((Dep. of Kenneth Lothridge ("Lothridge Dep.") at 121:22-24, Ex. J to Resp. UF; Resp UF ¶ 13.) The catwalk is utilized by Union Pacific employees for maintenance and to investigate train malfunctions. (Dep. of Steven B. Strickland ("Strickland Dep.") at 40:13-41:7, Ex. E to Resp. UF.) It also is used frequently by trespassers. (Strickland Dep. at 44:9-12.) During the two days prior to the accident, while the Wards were camping in West Sacramento, Mr. Ward crossed the river eight to ten times, from West Sacramento to Sacramento and back, using the lower level if the I-Street Bridge. (Pls.' Statement of Issues and Disp. Material Facts in Opp'n Summ.J. ("Resp. UF") ¶ 22.) During a previous trip to Sacramento a year earlier, Mr. Ward also crossed the bridge's lower level on several occasions.

On the morning of March 9, 2003, Mr. and Mrs. Ward were preparing to depart Sacramento and continue their journey to Oregon. (Ward Dep. at 30:16-22.) They packed their belongings and walked east across the lower level of the I-Street Bridge to the Shell Station on Richards Boulevard in Sacramento. (Id. at 30:22-31:4.) At this point, Mr. Ward decided to return to West Sacramento to purchase cigarettes at a mini-market located approximately one block from the west end of the bridge.[4] (Id. at 31:2-10.) He left his wife at the Shell Station and began the walk back over the lower level of the bridge. (Id.) When Mr.

[4] According to Mr. Ward, he was returning to the mini-market in West Sacramento because it sells "Rollings" for "only 1.59 a packet." (Ward Dep. at 31:5-7.)

Ward was approximately three quarters of the way across, he was struck by a train operated by Amtrak. Mr. Ward's left leg was severed below the knee, and he was thrown from the bridge onto the dirt riverbank below.

STANDARD

The Federal Rules of Civil Procedure provide for summary adjudication when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). One of the principal purposes of the rule is to dispose of factually unsupported claims or defenses. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986).

In considering a motion for summary judgment, the court must examine all the evidence in the light most favorable to the non-moving party. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962). If the moving party does not bear the burden of proof at trial, he or she may discharge his burden of showing that no genuine issue of material fact remains by demonstrating that "there is an absence of evidence to support the non-moving party's case." Celotex, 477 U.S. at 325. Once the moving party meets the requirements of Rule 56 by showing there is an absence of evidence to support the non-moving party's case, the burden shifts to the party resisting the motion, who "must set forth specific facts showing that there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). Genuine factual issues must exist that "can be resolved only by a

finder of fact, because they may reasonably be resolved in favor of either party." Id. at 250. In judging evidence at the summary judgment stage, the court does not make credibility determinations or weigh conflicting evidence. See T.W. Elec. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630-31 (9th Cir. 1987) (citing Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)). The evidence presented by the parties must be admissible. Fed. R. Civ. P. 56(e). Conclusory, speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and defeat summary judgment. See Falls Riverway Realty, Inc. v. City of Niagara Falls, 754 F.2d 49, 57 (2d Cir. 1985); Thornhill Publ'g Co., Inc. v. GTE Corp., 594 F.2d 730, 738 (9th Cir. 1979).

ANALYSIS

The moving defendants seek summary judgment of all claims asserted against them in plaintiffs' complaint.

A. Claims One and Two - Premises Liability and Nuisance against Amtrak

The undisputed evidence demonstrates that Amtrak neither owns nor operates the I-Street Bridge or adjacent land. (Resp. UF ¶ 12.) To be subject to premises liability or liability for nuisance, the defendant must be the owner or occupier of the land. See Ruoff v. Harbor Creek Community Assn., 10 Cal. App. 4th 1624, 1628 (1992)(holding that an owner or occupier of real property generally must exercise ordinary care in managing the property.")(citing Cal. Civ. Code § 1714(a)); Preston v. Goldman, 42 Cal. 3d 108, 114 (1986)(holding that former owners' liability for patent defects in pond ended with their transfer of

possession and control of the property.) Plaintiffs put forth no argument in opposition to summary judgment of these claims. As a result, the court grants defendants' motion for summary judgment of Claims One and Two against defendant Amtrak.

B. Claim Three - Negligent Operation of Train against Amtrak

Amtrak argues that plaintiffs' claim for negligent operation of the train is preempted by the Federal Rail Safety Act of 1970 ("FRSA"), 49 U.S.C. § 20101, et seq.[5] Alternatively, Amtrak asserts that plaintiffs' claims fail on the element of causation.

1. Preemption

The FRSA was enacted "to promote safety in every area of railroad operations and reduce railroad-related accidents and incidents." 49 U.S.C. § 20101. To give effect to this broad mandate, the Secretary of Transportation is authorized to "prescribe regulations and issue orders for every area of railroad safety." 49 U.S.C. § 20103. Pursuant to this authority, the Secretary, by delegation to the Federal Railroad Administration ("FRA"), promulgated regulations setting maximum train speeds for various classes of train track. See 49 C.F.R. § 213.9. The track where the accident occurred is classified as Class 2. (Resp. UF ¶ 15.) Under 49 C.F.R. § 213.9, the maximum allowable operating speed for passenger trains on Class 2 tracks is thirty miles per hour. It is undisputed that the train which struck Mr. Ward was not exceeding this speed.

The preemptive effect of the FRSA and its implementing regulations is governed by 49 U.S.C. § 20106, which contains

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[5] Formerly codified at 45 U.S.C. § 434, et seq.

express preemption and savings clauses.[6] It is well established that common law negligence claims based on excessive train speed are preempted under § 20106 and 49 C.F.R. § 213.9. CSX Transportation, Inc. v. Easterwood, 507 U.S. 658, 670 (1993).

Plaintiffs do not dispute this general rule, but argue that the savings clause contained in § 20106 saves their claim from preemption because a more stringent local ordinance was enacted to "eliminate or reduce an essentially local safety or security hazard." Plaintiffs' argument fails. First, the "ordinance" cited by plaintiffs is not a "state law, regulation or order." Rather, it appears to be Union Pacific's internal "Timetable Restriction" which sets a twenty mile-per-hour maximum speed for the I-Street Bridge.[7] (See Dec. of Leonard Sandoval in Supp. Summ. J. ¶ 3.) Section 20106 permits a "state," to adopt more stringent laws and regulations that survive preemption in certain

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[6] Section 20106 provides in relevant part:
Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable. . . A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order--
(1) is necessary to eliminate or reduce an essentially local safety or security hazard;
(2) is not incompatible with a law, regulation, or order of the United States Government; and
(3) does not unreasonably burden interstate commerce.

[7] Neither party provides the court with the language of the speed restriction or a definition of a "Timetable Restriction." However, the court's independent research reveals that train timetables "govern[] regularly scheduled trains on a specific route. It sets forth the route to be followed, scheduled stops, speed limits or restrictions, superiority of trains, and other necessary information for safe railroad operations." See 27 Am. Jur. 2d Proof of Facts § 471.

contexts.[8] The internal policies of Union Pacific, which is not a governmental entity, are irrelevant to the preemption issue. See Michael v. Norfolk Southern Railway Co., 74 F.3d 271, 273 (noting that a "railroad's own speed regulations may be evidence of negligence in state tort claim for excessive speed; however, such a state tort claim is preempted by federal law and the internal railroad regulations would be irrelevant under federal law.")

Moreover, even if Union Pacific's Timetable Restriction was a "state law, regulation or order," it is not saved from preemption by § 20106 because such a restriction is not "necessary to eliminate or reduce an essentially local safety or security hazard." 49 U.S.C. § 20106. In Union Pacific Railroad Co. v. California Public Utilities Comm'n, 346 F.3d 851 (9th Cir. 2003) ("Union Pacific v. CPUC"), the Ninth Circuit recently addressed § 20106's savings clause and concluded that an "essentially local safety hazard" is one "which is not adequately encompassed within national uniform standards." Id. at 860 (citations omitted). The court then determined that a ten-mile segment of track, with an abnormally high derailment rate, a sharp curve and steep grade, which was near an environmentally sensitive water source, did not fall within the "essentially local safety hazard" savings clause. Id. at 860-861. The court reasoned that all steep grades and sharp curves increase the risk

[8] Some courts have determined that § 20106's savings clause does not apply to municipal ordinances. See e.g., Baltimore and Ohio Railroad Co. v. City of Piqua, 1986 WL 8254 (S.D. Ohio, June 30, 1986). However, as the Timetable Restriction at issue here is not a local ordinance, the court need not address this issue.

of derailment and that many areas of track in the United States share similar characteristics, which can be encompassed within national uniform standards. Since the FRA is aware of the dangers presented by such areas they are not essentially local safety hazards. Id. at 61.

Here, plaintiffs provided little evidence or argument to support their contention that the I-Street Bridge presents an essentially local safety hazard. Rather they simply assert that the "urban setting of the depot and bridge" creates a "localized safety hazard." (Pls.' Mem. Opp'n Summ. J. at 11.) However, presumably many train depots and bridges are located in urban areas throughout California and the United States. Following the reasoning of Union Pacific v. CPUC, this type of safety hazard can be addressed at the federal level. Thus, plaintiffs' common law negligence claim for excessive speed is preempted by the FRSA.

Plaintiffs also argue that their negligent operation claim is not limited to excessive speed. The pertinent language in the complaint provides:

> Third Cause of Action Negligent Operation of Train . . . Jacob Keating was the engineer of train 727 and was either stopped or just leaving the Amtrak station . . . when he noticed plaintiff Joshua Ward crossing the I-Street Bridge railroad tracks in front of him. Rather than waiting until it was safe to proceed, defendant Jacob Keating, then traveling at an excessive speed for the conditions, struck and seriously injured plaintiff Joshua Ward . . ..

(Complaint ¶ 33.) According to plaintiffs, the above referenced language alleges negligent conduct, in addition to excessive speed. Specifically, they note that the complaint "clearly refers to Keating's actions, namely proceeding in an unsafe

manner by not slowing down or otherwise stopping the train before hitting plaintiff, as negligent. (Pls.' Mem. Opp'n Summ. J. at 12.) Plaintiffs have simply repackaged their excessive speed claim under the vague rubric of "proceeding in an unsafe manner." However, the specific conduct plaintiff's identify as "proceeding in an unsafe manner" is Keating's *failure to slow down or stop*. While presumably a person could fail to slow down or stop for several reasons, plaintiffs have identified none except "excessive speed for the conditions." Consequently, plaintiffs' negligent train operation claim is preempted by the FRA.

C. Claims Four and Five - Premises Liability and Nuisance against Union Pacific

In the complaint, plaintiffs allege that Union Pacific "negligently and carelessly constructed, designed, maintained, supervised, managed and/or controlled the vicinity of the accident, the tracks, bridge and entries thereto, so as to fail to adequately protect persons from entering the bridge or protect persons such as [Mr. Ward] who were known to cross the bridge." (Pls.' Comp. ¶ 40.)

Union Pacific contends that summary judgment of plaintiffs' premises liability and nuisance claims is warranted because it had no duty to warn Mr. Ward regarding the danger posed by the railroad tracks, which presented an open and obvious danger. Alternatively, Union Pacific contends that plaintiffs cannot demonstrate the element of causation because "Mr. Ward's decisions and actions were the substantial factor in causing his injury." (Defs.' Mem. Supp. Summ. J. ("Defs.' Mem.") at 21.)

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1. Duty

Duty is a question of law for the court and can be properly decided in the context of a summary judgment motion based upon the evidentiary showings of the parties. Silva v. Union Pacific Railroad Co., 85 Cal. App. 4th 1024, 1029-1030 (Cal. App. 2000) In such context, the court has an "established factual universe" to make the decision as to whether a legal duty exists. (Id. at 1030.)

Under California law, "[e]veryone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself." Cal. Civ. Code § 1714(a). This duty of ordinary care extends to the owners and occupiers of land. See Rowland v. Christian, 69 Cal. 2d 108, 112-119 (Cal. 1968)(rejecting common law status-based approach to land-owner liability and adopting duty of ordinary care, absent compelling policy reason not to impose duty). In certain circumstances, where clearly supported by public policy, courts will recognize an "exception to the general principle that a person is liable for injury caused by the failure to exercise reasonable care." Silva, 85 Cal. App. 4th at 1028-1029; Rowland, 69 Cal. 2d at 112. The factors used to determine whether an exception is warranted are: the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the

defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved. Rowland, 69 Cal. 2d at 112-113; Silva, 85 Cal. App. 4th at 1028-1029.

a. Foreseeability

In determining duty, the court does not decide "whether a particular plaintiff's injury was reasonably foreseeable in light of a particular defendant's conduct." Brooks v. Eugene Burger Management Corp., 215 Cal. App. 3d 1611, 1620 (1989). Rather, the court "evaluate[s] more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed on the negligent party." Id.

The court finds that the category of negligent conduct alleged here - failing to prevent individuals from using the walkway between the railroad tracks through fencing, warnings or policing – was sufficiently likely to result in injury to individuals who frequently cross the lower level of the bridge. The I-Street Bridge is located in the heart of highly populated area – downtown Sacramento. Most importantly, Union Pacific knew trespassers frequently used the walkway on the lower level of the bridge to cross the river to and from West Sacramento.[9]

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[9] Plaintiffs' request for judicial notice of the November 27, 2001 Sacramento Bee article and November 26, 2001 Office of Emergency Services report is DENIED. These facts are not properly subject to judicial notice. Fed. R. Evid. 201(b).

(continued...)

(Strickland Dep. at 44:9-19; Dep. of John W. Allen ("Allen Dep.") at 89:5-24, Ex. F to Resp. UF.) Union Pacific employees made contact with an average of 430 persons per year approaching or on the lower level of the bridge. (Allen Dep. at 89:5-24.) It is not difficult to foresee that such a known trespassing problem, if left unchecked, could result in injury.

The facts presented here are clearly distinguishable from those in Abboud v. Union Pacific Railroad Co., No. 02-4140 (N.D. Cal.), which is relied on by Union Pacific. In that case, the district court found that the harm suffered by an individual struck by a train on an open segment of track in Hayward, California was not foreseeable. However, in that case, there was no evidence that Union Pacific had knowledge that "trespassers tended to cross the tracks at that particular location near milepost 21 [where the plaintiff was injured]." Id., slip op. at 12. By contrast, here, plaintiffs have presented evidence, which Union Pacific does not dispute, that it had knowledge that trespassers routinely crossed the precise location where the injury occurred, the lower span of the I-Street Bridge.

Union Pacific also argues that it had no duty to fence, warn or otherwise prevent individuals from accessing the walkway on the lower section of the bridge because the railroad tracks were an open and obvious danger. While train tracks generally do

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[9](...continued)
Plaintiffs and defendants make numerous other evidentiary objections to statements and exhibits submitted by the other party. However, it is unnecessary to rule upon these objections to dispose of defendants' motion except as otherwise noted by the court.

present an open and obvious danger, Mr. Ward testified that he knew that the lower span of the bridge was used by members of the public, that he himself had crossed the lower span on multiple occasions without incident, that he had never seen a "No Trespassing" sign, and had never actually seen a train cross the bridge. Under such circumstances, a person could discount the risk of using the walkway.

Finally, Union Pacific contends that, although it knew trespassers frequently used the walkway, it could not foresee the harm to Mr. Ward because any such use was careless since there is a safe route across the river on the upper level of the bridge. While there is an alternate route, this does not diminish the fact that Union Pacific knew a significant number of individuals continued to use the lower span.[10] Moreover, the cases cited by Union Pacific, Pineda v. Ennabe, 61 Cal. App. 4th 1403 (Cal. App. 1998) and Edwards v. State of California, 206 Cal. App. 3d 1284, did not conclude that the injuries sustained in those cases were unforeseeable due to the carelessness of the plaintiffs; rather they concluded that no duty was owed, *despite* the foreseeability of the risk, for policy reasons. See e.g., Pineda, 61 Cal. App. 4th at 1409 ("The purpose for requiring a duty . . . is to avoid the extension of liability to every conceivably foreseeable accident, without regard to common sense or good policy.") More

[10] "Although duty is primarily a question of law, its existence may frequently rest upon the foreseeability of the risk of harm. Foreseeability may be decided as a question of law only if, under the undisputed facts, there is no room for reasonable difference of opinion." Silva, 85 Cal. App. 4th at 1029. Here, the facts submitted on which the court relies are undisputed and thus it is appropriate to resolve the question of duty as a matter of law.

importantly, in neither of those cases were the defendants on notice that individuals frequently engaged in the precise conduct that caused the harm. See Pineda (noting that no similar incidents had occurred in defendant's building); Edwards, 206 Cal. App. 3d at 1286 (citing no evidence that other sports fans had attempted to climb fence or been harmed as a result and noting that no incidents were reported at the fence over twelve-year period). By contrast, here Union Pacific was well aware that trespassers routinely crossed the lower level of the bridge. Thus, the court concludes that the type of harm suffered by Mr. Ward in this case was foreseeable.

b. Degree of Certainty of Injury to Mr. Ward

Parties agree that the harm suffered by Mr. Ward satisfies the element of certainty of injury in favor of finding a duty.

c. Closeness of connection between Mr. Ward's Injuries and Union Pacific's Conduct

In analyzing the closeness of connection, the court evaluates whether the causal link between the injury and the negligence of the defendant is so attenuated that liability should not be imposed. Bryant v. Glastetter, 32 Cal. App. 4th 770, 781 (1995). The court finds that there is a close connection between Mr. Ward's injuries and Union Pacific's failure to prevent trespassers from using the lower span of the bridge to cross the river. While Union Pacific offered substantial evidence regarding its efforts to prevent trespassing on the thousands of miles of track in the Oakland division, it did not explain what measures were taken to prevent trespassing on the lower span of I-Street Bridge, which is located in a

highly-populated area and used routinely by trespassers to cross the river. Plaintiff offered declarations from individuals who "have crossed the lower part the [sic] I Street Bridge where the trains run countless times," and "have never been asked to leave or told that [they] could not cross there." (See Decls. of Bridge Users.) More to the point, the individuals all testified that the Union Pacific employees they met "simply said hello," and did not prevent them from crossing the bridge. (See id.)

d. Moral Blameworthiness.

The court also must evaluate whether Union Pacific's conduct is morally blameworthy. Rowland, 69 Cal. 2d at 113. The moral blame attendant to the defendant's ordinary negligence is generally insufficient to find moral blameworthiness. Adams v. City of Fremont, 68 Cal. App. 4th 243, 270 (1998). Courts require a higher degree of culpability, such as where the defendant (1) intended or planned the harmful result, (2) had actual or constructive knowledge of the harmful consequences of their behavior, (3) acted in bad faith or with a reckless indifference to the results of their conduct, or (4) engaged in inherently harmful acts. Id. (citations omitted). Here, there is undisputed evidence that Union Pacific knew trespassers routinely used the lower level of the I-Street Bridge. On the other hand, there is no competent evidence that similar accidents had occurred on the bridge. In addition, Union Pacific had some programs in place to prevent trespassing – at least at a national and/or regional level. While these programs may not have been adequate to address the specific trespassing problem on the I-Street Bridge (this is a question for the trier of fact), it is

clear that Union Pacific was not entirely indifferent to the risk of harm. Thus, the court cannot conclude that Union Pacific's conduct was morally blameworthy.

e. Policy of Preventing Future Harm and the Extent of the Burden to Union Pacific and Consequences to the Community of Imposing a Duty

The court next must determine whether imposition of liability would further the policy of preventing future harm and the extent of burden on the defendant and public in imposing such a duty. As noted previously, Union Pacific was aware that trespassers frequently crossed the lower span of the bridge. Public policy supports imposition of a duty to take reasonable steps to prevent trespassing, through warnings, fencing or policing, where the defendant is aware of trespassing over a bridge in a highly-populated area. While the potential for liability will impose burdens on Union Pacific, they are not as great as Union Pacific contends. The trespassing situation presented here is unique in that the trespassing occurred over a railroad bridge, rather than on an open span of track, Union Pacific knew that trespassers routinely crossed this precise section of tracks, and the bridge is located in the center of an urban area. Requiring Union Pacific to use ordinary care to prevent trespassing *in such circumstances* will not expand liability to injuries suffered by trespassers in remote areas where it has no notice that routine trespassing occurs. See Leslie G. v. Perry & Associates, 43 Cal. App. 4th 472, 480 (1996) (noting that "[I]n cases where the burden of preventing future harm is great, a high degree of foreseeability may be required.....") (quoting Ann M. v. Pacific Plaza Shopping Center,

6 Cal.4th 666, 678-679 (1993).

f. Availability, cost and prevalence of insurance

Both parties agree that this factor is irrelevant in this case.

In summary, the Union Pacific has not established that the Rowland factors analyzed above support creating an exception to the general rule that Union Pacific, as an owner/occupier of land, owes a duty of ordinary care, as articulated in Cal. Civ. Code § 1714. The court finds that Union Pacific owed such a duty.

2. Causation

Union Pacific asserts the same causation argument as Amtrak. See supra Section B. For the same reason, the court rejects Union Pacific's legal argument and finds that plaintiffs have raised a triable issue as to causation.

CONCLUSION

For the foregoing reasons, the defendants' motion for summary judgment is granted in part and denied in part as follows:

1. Defendants' motion for summary judgment of Claims One Two and Three against Amtrak is GRANTED.

2. Defendants' motion for summary judgment of Claims Four and Five against Union Pacific is DENIED.

IT IS SO ORDERED.

DATED: July 22, 2005

/s/ Frank C. Damrell Jr.
FRANK C. DAMRELL, Jr.
UNITED STATES DISTRICT JUDGE